



DEPARTMENTS OF THE ARMY AND THE AIR FORCE
NATIONAL GUARD BUREAU
1411 JEFFERSON DAVIS HIGHWAY
ARLINGTON, VA 22202-3231

08 JUN 1995

NGB-JA (27-1a, T-1)

MEMORANDUM FOR THE ADJUTANTS GENERAL FOR ALL STATES, PUERTO RICO, THE VIRGIN ISLANDS, GUAM, AND THE DISTRICT OF COLUMBIA

SUBJECT: (All States Log Number P99-0022) Use of Federal Funds for Lobbying or Propaganda

1. Purpose. This is to provide general guidance on how to comply with the provisions of federal law that limit the expenditure of Federal funds in connection with certain forms of communication by Federal Government officials with members of Congress and the public. These guidelines summarize administrative interpretations of these complex laws. You should contact your designated ethics officials for further assistance when applying these guidelines to contemplated activities.
2. 18 U.S.C. § 1913. The "Anti-Lobbying Act," 18 U.S.C. § 1913, prohibits the expenditure of federal appropriations in furtherance of "grass roots" lobbying efforts, where an attempt is made to induce the public to contact Congress and persuade Members to support or oppose pending legislation. This criminal statute is applicable to federal officers and employees, including Title 10 military personnel, civilian employees of the National Guard Bureau, United States Property and Fiscal Officers, National Guard technicians, and other federal employees. It also applies to all National Guard personnel whenever in Federal active duty status. National Guard members serving in a Title 32 capacity or in state active duty status are not subject to the "Anti-Lobbying Act" but other restrictions described below apply to these personnel. The "Anti-Lobbying Act" does not prohibit federal agency officials from expressing their views regarding the merits or deficiencies of legislation, even if their objective is to persuade the public to support the agency's position, as long as they do not urge the public to contact Congress.
3. 31 U.S.C. § 1352. This federal statute broadly proscribes the expenditure of Federal funds for government contract lobbyists to influence certain Federal actions. This statute specifically prohibits any recipient of a Federal contract, grant, loan, or cooperative agreement from using Federal funds to pay any person for influencing or attempting to influence a Member of Congress, an employee of Congress, or an officer or employee of any Federal agency in connection with certain Federal actions. These Federal actions include: (a) the awarding of any Federal contract; (b) the making of any Federal grant; (c) the making of any Federal loan; (d) the entering into of any cooperative agreement; or (e) the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. This restriction does not apply to agency and liaison activities not directly related to one of the specific Federal actions. 31 U.S.C. § 1352(d)(1)(A). Also, this restriction does not apply to professional and technical services rendered directly in the preparation, submission, and negotiation of any bids, proposals or applications for that Federal action. 31 U.S.C. § 1352(d)(1)(B). These restrictions are further described in the Code

of Federal Regulations at 32 C.F.R. Part 28, *New Restrictions on Lobbying*, and in section 804 of the National Guard Bureau Master Cooperative Agreement.

4. **DOD Appropriations Restrictions.** A recurring provision in the Department of Defense annual appropriations acts provides that no DOD appropriations "shall be used in any way, directly or indirectly, to influence congressional action on any legislation or appropriation matters before the Congress." See, e.g., DOD Appropriations Act, 1999, P.L. 105-262, § 8012. These restrictions preclude any member or employee of the National Guard, while paid from Federal funds, from lobbying the Congress. The restrictions apply while in Title 10 or Title 32 military status, to technicians or reimbursed state active duty status, and to state employees whose salaries or wages are Federally reimbursed under cooperative agreements. Improper expenditures in violation of these or other restrictions may constitute a violation of the Anti-Deficiency Act which exposes Federal personnel to potential criminal and civil penalties, and state personnel to recovery or restitution of the improperly expended funds. Suspected violations of the Anti-Deficiency Act must be reported and investigated in accordance with applicable regulations.

5. **Prohibited Actions.** The following actions would be violations of the Anti-Lobbying Act and related lobbying laws when in Federal status or paid with federal funds, or when any use of Federal supplies, equipment, or other resources is made.

a. Department or Agency officials may not engage in large-scale "grass roots" lobbying activities with respect to legislation or appropriations. That is, they may not engage in a significant effort to encourage members of the general public (including a private organization, state or local agency, or other public organization) to contact or communicate with Congress on legislation or appropriations.

b. It is considered "grass roots" lobbying – and therefore is proscribed – to distribute written materials to the public on a large scale that encourage members of the public to contact or communicate with Congress about legislation or appropriations. Therefore, Department or Agency officials

- May distribute written materials to the public, even on a large scale, that advocate the Administration's position on legislative matters, including legislation or appropriations, but do not encourage members of the public to contact or communicate with Congress;
- May make a statement in writing, for example in an op-ed piece, that advocates the Administration's position but does not encourage members of the public to contact or communicate with Congress;
- May also make public speeches that promote the Administration's position on legislative matters, including legislation or appropriations. These speeches may even encourage members of the public to support the Administration's legislative position, so long as the Department does not distribute copies of materials containing that encouragement to the public on a large scale.

- c. During work hours or in a duty status, Department or Agency personnel may not contact members of Congress or congressional staff members outside proper official channels to urge action about legislation or appropriations.
- d. During non-work or non-duty hours, Department or Agency personnel may not use Federal communications resources, supplies, and other resources either to contact members of Congress or congressional staff members for lobbying purposes or to urge other persons to do so.
- e. Department or Agency personnel may not use Federal funds to hire a lobbyist.
- f. Department or Agency personnel may not develop or prepare material to be used for the purpose of lobbying Congress, except when prepared for use by the Department of Defense, Department of the Army, or the Department of the Air Force in support of departmental positions through official channels.
- g. Department or Agency officials may not use appropriated funds to aid any outside organization in conducting large-scale grass roots lobbying activities with respect to legislation or appropriations. Therefore, Department or Agency officials
 - Should not create any materials for the organization to distribute in connection with such activities or have any government employee spend time collecting materials that would not otherwise have been collected.
 - Should not solicit the organization to conduct large-scale grass roots lobbying activities, or control the organization in its conduct of such activities. Department or agency officials should not use the outside organization as an arm of the Department to engage in proscribed grass roots lobbying activities.

But subject to the Freedom of Information Act (5 U.S.C. § 552), Department or Agency officials may provide preexisting materials or information to an outside organization, at the organization's request, for it to reproduce and distribute as it sees fit in connection with any lobbying activity.

6. Permissible Activities. These statutes permit the following activities:

- a. National Guard officials may communicate directly with a member of Congress for the purpose of providing information or soliciting that member's support for the Administration's position on any legislative matter, including legislation or appropriations, pending or not, whether or not such contact is invited. However, unsolicited communications with members of Congress must be through official Department or Agency channels, that is, through those officials authorized to speak to Congress on behalf of the Department.
- b. Department or Agency personnel may contact a member or employee of Congress for the purpose of supporting or opposing legislation, provided that: it occurs on the individual's own non-duty time, no Federal resources are used, and the contact is clearly and explicitly made in the person's personal rather than official capacity.

c. Subject to the provisions of State law, Department or Agency personnel may contact a member or employee of Congress for the purpose of supporting or opposing legislation, provided that: they are acting in a state capacity, not paid with Federal funds, no Federal resources are used, and the contact is clearly and explicitly made in the person's state capacity.

7. Communication with Congress through Official Channels. Department or Agency officials may communicate directly with a member of Congress for the purpose of providing information or soliciting that member's support for the Administration's position on any legislative matter, including legislation or appropriations, pending or not, whether or not such contact is invited. However, unsolicited communications with members of Congress must be through official Department channels, that is, through those officials authorized to speak to Congress on behalf of the Department. "Proper official channels" means Department of Defense, Department of the Army, and Department of Air Force channels, and authorized legislative liaison personnel in accordance with prescribed regulations and other directives (that is, NGB Policy and Liaison). Normally, this does not include the Adjutants General of a state or other members of a state National Guard organization. For this reason, National Guard Bureau employees, either military or civilian, should not request, urge or suggest that a state Adjutant General or other member of a state National Guard organization contact a U.S. Senator or Representative to lobby for legislation or appropriations. The principal purpose of Congress in enacting 18 U.S.C. § 1913 is to prevent Federal agencies from stimulating "grass roots" pressure on Congress from the public and constituencies of the agencies' programs. Accordingly, the National Guard as a state organization should not be a part of the official promotion by DOD and NGB of their legislative and appropriations objectives. Any communication from an official of NGB or any other part of the Department of Defense to a state National Guard official or employee that appears to request or urge lobbying would be a prohibited act and should be disregarded. States may, however, on their own initiative, communicate to Congress their views on these issues, provided no Federal funds or resources are used.

8. Responses to Congressional requests for information. National Guard officials may respond to requests for information from members of Congress or congressional staff. Such responses, when made in a Federally paid status, should be factual in nature and should generally not include positions on legislation or appropriations unless specifically requested. If a position on legislation or appropriations is specifically requested, the response must be cleared through official channels (i.e., NGB Policy and Liaison) if the response is made in a Federal capacity. An exception may be made when the request clearly seeks personal views or a subordinate organization's views. In such cases, however, an appropriate disclaimer must be included stating that the views have not been coordinated within the Department of Defense, Department of the Air Force, Department of the Army, or cleared by the Office of Management and Budget, and do not represent the views of those agencies.

9. Personal or State lobbying. Lobbying outside official channels by Federal or Federally paid civilian employees or military members during work or duty hours is prohibited. However, these laws do not prohibit National Guard personnel, *in their personal or state capacity*, from contacting members of Congress or their staff members during non-work or non-duty hours or when not Federally paid, so long as federally appropriated funds are not used in the process. Federally paid official time, or Federal

equipment or supplies, such as stationery, computers, electronic mail (e-mail), telephones, and fax machines may not be used for these purposes.

10. Lobbying state legislatures. These federal statutes do not expressly prohibit the use of appropriated funds to lobby state legislatures. However, based on the prohibition against use of Federal funds for publicity and propaganda purposes, general fiscal law principles, and Comptroller General decisions, Federal funds may not be used by a Federal or state agency for the purpose of lobbying state legislatures.

11. Prohibition on publicity and propaganda. According to 5 U.S.C. § 3107, "appropriated funds may not be used to pay a publicity expert unless specifically appropriated for that purpose." This statute does not prohibit an agency's legitimate informational functions or promotional functions where authorized by law. Instead, it is intended to prohibit publicity activity undertaken to reflect credit upon an agency or agency officials, rather than further the agency's programmatic objectives. Recurring provisions in DOD's annual appropriations Acts provide that DOD appropriations shall not be used for "publicity or propaganda purposes not authorized by Congress." See, e.g., DOD Appropriations Act, 1999, P.L. 105-262, § 8001. This provision prohibits agency officials from engaging in public relations activities that have as their sole purpose "self-aggrandizement" or "puffery" about the agency, that is, a public relations campaign that has as its sole purpose emphasizing the importance of the agency or its activities. The provision also prohibits "covert" public relations activities, that is, activities that are designed to get information to the public through the media or otherwise and are generated at least in part by the agency, but are made to appear as if they come solely from a source outside the government. Examples of this kind of prohibited activity are

- Preparing letters to editor, op-ed pieces, or other publications to be published solely as the opinions of individuals outside of the government.
- Collaborating in the preparation of materials that will be published or distributed to the public that purport to be written by and present the opinions exclusively of individuals outside of the government.
- As part of a public relations campaign, arranging for meetings of individuals outside of the government with the media, but making it appear as if the government had no involvement.

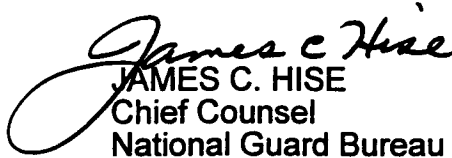
The provision does not prohibit legitimate informational activities, such as reporting about and explaining agency activities and programs, justifying agency policies to the public, or rebutting attacks on agency policies. For example, the appropriations restriction does not prohibit spending appropriated funds for purely informational activities designed to provide factual information that increases public awareness of the National Guard. Informational programs must comply with applicable regulations. See, e.g., Army Reg. 360-5, *Public Information*, 31 May 1989; Army Reg. 360-61, *Community Relations*, 15 January 1987; Army Reg. 360-81, *Command Information Program*, 20 October 1989; and NGB Pam 360-5, *National Guard Public Affairs Guidelines*. Caution should be used in preparing any publication, speech, display, film production, printed material, or computer message regarding the current or future mission capabilities of the National Guard, or preparing a contract for the same material or services, to ensure

that the publication, display, or material is directly related to the legitimate operational needs of an authorized National Guard program, and is not for the purpose of aggrandizing the National Guard in general or any program.

12. The National Guard Bureau Office of Chief Counsel may be consulted regarding questions or concerns about the lobbying and propaganda prohibitions described in this memorandum. The National Guard Bureau Public Affairs Office may be consulted about whether an informational, community relations, or promotional activity is permissible.

13. This memorandum supersedes All State Log Number P95-0110, and expires three years from the date it is signed, unless it is rescinded prior to that date or required to be superseded by revisions of the federal laws and regulations cited herein.

FOR THE CHIEF, NATIONAL GUARD BUREAU:


JAMES C. HISE
Chief Counsel
National Guard Bureau

CF:

Each AG (1)

Each USPFO (1)

Full time JAG Office (1)

Senior ARNG JAG Officer (1)

Senior ANG JAG Officer (1)

NGB-PL (1)